

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT TACOMA

COUNTRY MUTUAL INSURANCE
COMPANY, an Illinois corporation
individually and as successor in interest to
HOLYoke Mutual Insurance
Company in Salem,

Cause No. 3:20-cv-05337 RJB-TLF

JOINT STATUS REPORT

Plaintiff.

vs.

EVERGREEN LANDING, LLC

Defendant.

COME NOW the parties, by and through their counsel of record, and submit this Joint Status Report and Discovery Plan.

1. Statement of Case

Plaintiff asserts claims for declaratory judgment that there is no coverage under a policy of insurance issued to the defendant for claims made in the underlying action, *Tiffany Casto and Ryan Jacobs v. Evergreen Landing, LLC*, Superior Court of Washington for Thurston County Cause No. 19-2-04188-34 (“the Liability Action”). The Liability Action is set for trial March 15, 2020 but is expected to be continued due to COVID-19 delays. Plaintiff

1 is defending Defendant under reservation of rights in the Liability Action. It is Plaintiff's
 2 position that the claims in the Liability Action arise out of allegations of bodily injury, damage
 3 to personal property and constructive eviction, if any, that were caused by the inhalation of, or
 4 exposure, to mold, which is excluded from coverage under the Policy issued to Evergreen by
 5 Country Mutual. Accordingly, Country Mutual seeks declaratory judgment it has no duty to
 6 defend or indemnify Evergreen against the claims made in the Liability Action.

7 The Defendant has filed counterclaims for declaratory judgment and breach of
 8 contract. The defendant seeks a ruling that the Plaintiff has a duty to defend the claims in the
 9 Liability Action under the Policy issued by Country Mutual to Evergreen and that Plaintiff has
 10 further breached the insurance contract by denying a duty to indemnify. Defendant seeks fees
 11 and costs under *Olympic Steamship*.

12 2. Additional parties to this lawsuit shall be joined no later than September 18,
 13 2020.

14 3. **Proposed Discovery Plan**

15 The parties' counsel conducted a Fed.R.Civ.P. 26(f) conference on June 29, 2020. The
 16 parties propose the following discovery plan:

17 (A) The parties' Fed.R.Civ.P. 26(a) initial disclosures will be exchanged by
 18 July 6, 2020;

19 (B) It is Country Mutual's position that the Court can decide the coverage
 20 issues on summary judgment without the need for discovery. However, if the
 21 Court were to find that an issue of fact precluded summary judgment, then
 22 Country Mutual would likely seek discovery related to the facts and allegations
 23 in the Liability Action. Evergreen proposes a stay of discovery until the

1 Liability Action is concluded. The parties agree that discovery need not be
2 phased, limited, and/or focused on particular issues;

3 (C) The parties suggest no changes to the limitations on discovery imposed
4 under the Federal and Local Civil Rules regarding electronically stored
5 information;

6 (D) Given the claims currently asserted in this action, the parties do not
7 currently anticipate any issues related to privilege;

8 (E) The parties suggest no changes to the limitations on discovery imposed
9 under the Federal and Local Civil Rules; and

10 (F) At this time the parties have no suggestions for any other orders.

11 4. **Statement Regarding Local Rule 26 (f)(1)**

12 (A) **Prompt Case Resolution.** Plaintiff has filed a Motion for Summary
13 Judgment on its duty to defend and indemnify, noted for July 11, 2020.
14 Defendant plans on filing a cross-motion for Partial Summary Judgment on the
15 duty to defend. Another issue Defendant has raised is whether the Plaintiffs in
16 the Liability Action will join as Interested Parties.

17 (B) **Alternative Dispute Resolution.** The parties believe that private
18 mediation likely will be the appropriate form of ADR under Fed.R.Civ.P. 39.1.
19 The parties further believe that mediation should occur, and will make efforts
20 towards accomplishing a mediation, by the close of discovery.

21 (C) **Related Cases.** *Tiffany Casto and Ryan Jacobs v. Evergreen*
22 *Landing, LLC*, Superior Court of Washington for Thurston County Cause No.
23 19-2-04188-34, as discussed in Section One above.

(D) Discovery Management. The parties do not anticipate needing additional management outside the federal and local rules.

(E) Anticipated Discovery Sought. The parties do not anticipate needing discovery in excess of that allowed by the federal and local rules.

(F) Phasing Motions. At this time, Country Mutual does not anticipate the need for phasing. Evergreen believes, after the cross-motions for summary judgement, the should be stayed until the Liability Action is concluded.

(G) Preservation of Discoverable Information. The Parties have complied with the federal and local rules.

(H) Privilege Issues. At this point in time, the parties do not anticipate issues related to privilege given the current claims.

(I) Model Protocol for Discovery of ESI. The parties agree the model protocol should be sufficient.

(J) Alternatives to Model Protocol. The parties suggest no alternatives.

5. In the absence of a stay, the parties believe that all remaining discovery can be completed by May 14, 2021.

6. Plaintiff reserves the right to request bifurcation of claims.

7. The parties do not believe that pretrial statements and the pretrial order should be dispensed with.

8. The parties believe at some point prior to the discovery cutoff date, mediation would be appropriate in conformance with Local Rule 39.1. At this time, the parties do not believe this case is appropriate for the Individualized Trial Program under Local Rule 39.2.

9. The parties have no specific suggestions for shortening or simplifying the case.

1 **10.** In the absence of a stay, the parties believe this case will be ready for trial by
2 August 16, 2021, approximately 120 days after the close of discovery, under Local Rule 16.

3 **11.** ECF 5 omitted a paragraph 11.

4 **12.** Neither party has demanded a jury yet.

5 **13.** The parties estimate this case will require three to four (3 to 4) trial days.

6 **14.** The name, address and telephone number of counsel for plaintiff are:

7 Misty Edmundson
8 Cristin Cavanaugh
9 Soha & Lang, PS
10 1325 4th Ave, Suite 2000
11 Seattle, WA 98101
12 (206) 624-1800

13 The name, address and telephone number of counsel for the defendant are:

14 Linda Foreman
15 Foreman Sturm & Thede, LLP
16 5825 60th St. SE
17 Snohomish, WA 98290
18 (425) 377-1100

19 **15.** At this time, trial counsel have no known complications for setting a trial date in
20 August/ September 2021.

21 **16.** All parties have been served with the Summons and Complaint.

22 **17.** The parties do not request a scheduling conference before the scheduling order
23 being entered.

24 **18.** All non-government corporate parties have filed disclosure statements. See ECF
25 2 filed on April 10, 2020 and ECF 13 filed on June 22, 2020.

1 DATED this 6th day of July, 2020.

2 SOHA & LANG, P.S.

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10 ***Attorneys for Plaintiff Country Mutual Insurance
11 Company, an Illinois corporation individually and as
12 successor in interest to Holyoke Mutual Insurance
13 Company in Salem***

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